

Senate File 400 - Introduced

SENATE FILE 400
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1120)

A BILL FOR

1 An Act relating to the conveyance or encumbrance of a homestead
2 by a spouse.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 561.13, Code 2011, is amended to read as
2 follows:

3 **561.13 Conveyance or encumbrance.**

4 1. A conveyance or encumbrance of, or a contract to convey
5 or encumber the homestead, if the owner is married, is not
6 valid, unless and until the spouse of the owner executes may
7 be invalidated by a spouse who has not executed the same or a
8 like instrument, or a power of attorney for the execution of
9 the same or a like instrument. However, when the homestead is
10 conveyed or encumbered along with or in addition to other real
11 estate, it is not necessary to particularly describe or set
12 aside the tract of land constituting the homestead, whether the
13 homestead is exclusively the subject of the contract or not,
14 but the contract may be enforced as to real estate other than
15 the homestead at the option of the purchaser or encumbrancer.

16 2. If a spouse who holds only homestead rights and surviving
17 spouse's statutory share in the homestead specifically
18 relinquishes homestead rights in an instrument, including
19 a power of attorney constituting the other spouse as the
20 husband's or wife's attorney in fact, as provided in section
21 597.5, it is not necessary for the spouse to join in the
22 granting clause of the same or a like instrument.

23 3. A conveyance or encumbrance or a contract to convey or
24 encumber the homestead is not invalid under subsection 1 if any
25 of the following apply:

26 a. The nonsigning spouse's interest is terminated by divorce
27 or other order of the court.

28 b. Section 614.15 or 654.12B applies.

29 c. Voiding the conveyance or encumbrance or the contract
30 to convey or encumber the homestead would unjustly enrich the
31 nonsigning spouse.

32 4. For the purposes of this section, "nonsigning spouse"
33 means a spouse who has not executed a conveyance or encumbrance
34 or a contract to convey or encumber the homestead, the same or
35 a like instrument, or a power of attorney for the execution of

1 the same or a like instrument.

2 5. For the purposes of this section, a document that
3 provides all of the following meets the requirement of a "same
4 or a like instrument":

5 a. Includes information sufficiently identifying the
6 original conveyance, encumbrance, or contract.

7 b. Releases the homestead rights and surviving spouse's
8 statutory share in the homestead.

9 EXPLANATION

10 This bill provides that the conveyance or encumbrance of a
11 homestead by a married person who is the owner of the homestead
12 is not automatically invalid if the person's spouse has not
13 joined in the conveyance or encumbrance. Such a spouse must
14 take action to invalidate the conveyance or encumbrance.

15 The bill further provides that a conveyance or encumbrance
16 or a contract to convey or encumber the homestead is not
17 invalid under the bill if the nonsigning spouse's interest is
18 terminated by divorce or other order of the court, either Code
19 section 614.15 (relating to the general statute of limitations
20 for the failure of a spouse to convey or transfer an interest
21 in real estate) or Code section 654.12B (relating to the
22 priority status of a purchase money mortgage lien over all
23 other mortgages) applies, or if voiding the conveyance or
24 encumbrance would unjustly enrich the nonsigning spouse.

25 The bill defines a "nonsigning spouse" as a spouse who
26 has not executed a conveyance or encumbrance or the contract
27 to convey or encumber the homestead, the same or a like
28 instrument, or a power of attorney for a same or a like
29 instrument. A "same or a like instrument" document must
30 include information sufficiently identifying the original
31 conveyance, encumbrance, or contract and must release the
32 homestead rights and the surviving spouse's statutory share in
33 the homestead.